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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Petition of U S West Corporation)
for Relief from Barriers to Deployment)
of Advanced Telecommunications Services) CC Docket No. 98-26
)

COMMENTS OF THE
COMMERCIAL INTERNET EXCHANGE ASSOCIATION

Ronald L. Plessner
Mark J. O'Connor
Stuart P. Ingis

Piper & Marbury L.L.P.
Seventh Floor
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
202-861-3900

Its Attorneys

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SUMMARY

The Commercial Internet eXchange Association ("CIX") looks forward to the day when a multitude of broadband data access options are available to the American public. A grant of the U S West Petition, however, is quite unlikely to hasten that day. CIX is concerned that U S West's Petition, if granted, would extend the incumbent LEC's local access monopoly to the Internet. Specifically, CIX finds that:

- Competition and innovation on the Internet continues at an unprecedented pace. U S West's factual premises that the Internet is too congested, and fails to respond to market demand, is fundamentally flawed. CIX believes that Americans living in rural areas also deserve policies that promote efficient and competitive data access services, and not monopolies, in rural areas.
- CIX believes that Americans living in rural areas also deserve policies that promote efficient and competitive data access services, and not monopolies, in rural areas. Technical limitations to the widespread deployment of U S West's broadband services to rural America also argue against abandonment of local competition competitive safeguards.
- Internet competition and innovation is best served through a regulatory structure that permits broad access to the incumbent LEC's network. U S West's approach, by contrast, would close its network to competitive providers. The U S West plan fails to meet Congressional and Commission standards that protect competition from RBOC cross-subsidy and access discrimination.
- U S West neglects to address key competitive and public interest issues, including: (a) failure to describe how competing independent Internet Service Providers would connect to customers through the U S West broadband data services; (b) failure to address the inherent discrimination that results from deployment of xDSL when

independent ISPs lack collocation; (c) failure to articulate what improvements would be made to the Internet backbones.

- The 1996 Act properly places competitive safeguards on Bell Company participation in the interLATA services market to ensure open, nondiscriminatory, local competition. Consistent with this goal, the 1996 Act also limits the Commission's authority to forbear from these cornerstones of the legislation -- the Commission may not forbear from Section 251(c), 271, and 272 as U S West requests.

- Local competition is well served by the policies for network unbundling (including elements of the incumbent LEC's data access equipment), wholesale resale, and Open Network Architecture. A loss of these competitive safeguards would jeopardize the present and future broadband data access options for the American consumer.

For these reasons, CIX does not support the U S West Petition.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Petition of U S West Corporation)	
for Relief from Barriers to Deployment)	
of Advanced Telecommunications Services)	CC Docket No. 98-11
)	

**COMMENTS OF THE
COMMERCIAL INTERNET EXCHANGE ASSOCIATION**

The Commercial Internet eXchange Association ("CIX"), by its attorneys, files these comments on the February 25, 1998 "Petition for Relief" of U S West (the "U S West Petition" or "Petition"). CIX is a trade association that represents over 150 Internet Service Providers who handle over 75% of the United States' Internet traffic.¹ CIX works to facilitate global connectivity among commercial Internet service providers ("ISPs") in the United States and throughout the world. A CIX membership list is attached hereto. CIX is quite concerned that a grant of the U S West Petition would amount to nothing less than a new RBOC data local access monopoly, to the detriment of the innovative and competitive Internet services.

Introduction

CIX heartily supports the development of new telecommunications services that offer data users more innovative opportunities to access the Internet. Thus, in addition to traditional voice-grade wireline access, CIX anticipates the day when local competition among telecommunications carriers, as envisioned by the 1996 Act, will yield a host of exciting

¹ The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

alternatives to the current incumbent Local Exchange Carrier ("ILEC") monopoly services. These new providers and services will surely compete for the American consumer in terms of price (e.g., services that are competitive with ILEC ISDN offerings), quality of service (e.g., more responsive installation and customer care services), access convenience and portability (e.g., terrestrial wireless data and satellite data services), as well as a greater bandwidth options with alternative technologies engineered for data packet-switched communications.

CIX believes that competition for Internet services is well-served by the Telecommunications Act of 1996 ("1996 Act") and the Commission's on-going policies for competitive safeguards governing ILEC participation in the information services markets. Consistent with these regulatory and statutory goals, incumbent LECs must continue to keep the underlying telecommunications services (which should include unbundled elements of those services) open on equal and affordable terms for all competing telecommunications and Internet providers. Indeed, because the local access to both business and residential customers is still wholly in the hands of the ILEC, a competitive information and Internet market *can only* exist when all Internet providers have access at competitive prices to the same underlying ILEC telecommunications service offerings.

In CIX's view, the U S West Petition is fundamentally antithetical to these principles of competitive safeguards, open access to telecommunications services, and rigorous competition among Internet providers. If granted, it could devastate the vast majority of ISPs that lack facilities of their own and must rely on "equal access" to the ILEC network in order to reach their residential and business customers. Similarly, CLECs and other telecommunications carriers that could offer ADSL to ISPs in competition would be deprived of their unbundling and resale rights.

U S West contends that it will offer rural Americans high speed backbone connections that are better quality and less expensive than currently exist; U S West fails to demonstrate, however, how it could improve on the market of existing providers in these regions. Further,

while it has yet to demonstrate the minimum statutory criteria for in-region local competition, U S West contends that its own in-region interLATA entry can solve a purported Internet backbone congestion problem. In CIX's view, U S West asks the Commission to act in ways that exceed its statutory forbearance authority and that are otherwise contrary to the innovation directives of Section 706 of the 1996 Act. CIX is confident that the success of the Internet cannot be measurably improved on by U S West, and may be significantly harmed if the Commission approves U S West's plan for a local data access monopoly.

Discussion

I. U S West Misapprehends Competition and Innovation on the Internet

U S West asks the Commission to forebear from imposing certain regulatory restrictions that frustrate deployment to rural America of advanced telecommunications capabilities such as digital subscriber line technologies and data network services.² CIX finds that the Petition is essentially grounded on factually dismal and anecdotal perceptions of the state of competition, investment, and innovation on the Internet. In sum, the goals of Section 706 for "advanced telecommunications capability to all Americans" are unlikely to be realized through a grant of the Petition, and in fact would likely be hindered.³ U S West contends that the deployment "on a reasonable and timely basis of advanced telecommunications capability to all America,"⁴ especially those who live in rural areas is prevented by unnecessary regulatory restrictions. CIX adamantly disagrees with this assertion and finds that U S West's contentions are unsubstantiated.

² U S West Petition at 1.

³ 1996 Act, Section 706.

⁴ U S West Petition at 40.

A. *There Is No Internet Capacity Crisis to be "Solved" By U S West*

The Internet industry is experiencing a period of unprecedented growth, contrary to assertions of U S West that new technologies are being deployed and adopted at a slow pace. The number of Internet hosts that store information, interact, and relay communications increased from 1.3 million in 1993 to 19.5 million in 1997.⁵ In the United States, there exist over 4,000 Internet Service Providers and over 60 million Internet users.⁶ The extraordinary growth of the Internet is due to the efforts of many different industries and technological advances. While traditional circuit-switched telephony continues to move slowly towards open competition, the Internet Service Provider industry has been highly competitive from its inception, fostering low prices for residential and business Internet connectivity.

To encourage deployment in a manner consistent with the public interest, U S West claims that today's level of bandwidth congestion and Internet speeds are inadequate and demand is not being properly addressed by existing providers.⁷ This is an ironic assertion, since the level of demand for Internet bandwidth demonstrates that the Internet works well, it is not an indication of network "failure." While any successful network in today's global economy may face periods or incidences where demand outstrips supply, U S West essentially fails to coherently explain why the current market-based investments made on the Internet are reacting improperly to market demand for bandwidth.

U S West's aspirations for a more robust backbone are more likely to be confronted by the same market realities faced by the several other Internet backbone companies today: the *market*

⁵ Internet Domain Survey, July 1997, Produced by Network Wizards and available on the World Wide Web at <<http://www.nw.com/>>.

⁶ Id.

⁷ U S West Petition at 22.

demand for high capacity network services will drive the supply of Internet network deployment. In larger markets, backbones are being built and enhanced on an unprecedented level. The presence of U S West, as one among several companies providing Internet backbone service, is neither a necessary nor sufficient component to achieve the market-based deployment of higher capacity on the Internet. Laying lines to create a new multi-state network takes significant time and bears with it considerable uncertainty. As a result, the "public interest" promises that U S West makes for enhancing short-term Internet capacity are likely to ring hollow.

U S West also claims that owning an end-to-end network, including its own interLATA backbone, will enable it to centrally manage its network and offload traffic from the PSTN.⁸ This thinking is monopolistic. The ability to offload alleged congestion is not unique to U S West. The benefits to the PSTN will be seen as U S West as well as other providers roll out ADSL into the *local access* markets and interconnection agreements are reached between different backbone providers. As a result of market forces, it is Competition and not monopolistic control over the networks that will result in the most efficiently provisioned networks. As Chairman Kennard recently stated, "[t]he best way to ensure more bandwidth is to encourage local competition."⁹

Compared to the monopoly local telecommunications network, U S West must surely feel out of sorts in the decentralize environment of the Internet that reacts quickly to market forces. CIX believes it would be a grave mistake to permit U S West to superimpose its more centralized, monopoly model on the Internet.

⁸ U S West Petition at 26.

⁹ FCC News, "Chairman William E. Kennard Receives Alliance for Public Technology Pioneer Award; Outlines Guidelines for Bandwidth," (Feb. 27, 1998).

B. Market Investment and Innovation in the Internet Backbones Are Significant and Fundamentally Sound

Every indication is that the Internet backbones are rapidly upgrading as quickly as possible to meet network demand and to offer a host of innovative services. All of the major backbone providers including AT&T, MCI, Sprint, PSINet, UUNET and Qwest are rapidly deploying advanced broadband networks. Several examples sufficiently put the U S West's notion of inadequate investments on the backbones to rest.

- Qwest is currently constructing a 16,000 mile network that is scheduled to be completed in the 2nd quarter of 1999, of which currently only 3,500 miles of this are activated.¹⁰ This is obviously a very aggressive growth plan.
- Sprint on September 3, 1997, announced that it would increase bandwidth by 400 percent. Sprint stated that this upgrade "allows Sprint to continue to meet and stay ahead of the increasing traffic demands on its Internet backbone."¹¹
- In October of 1997, AT&T announced that it would offer its Worldnet Internet Service over its own IP backbone, rather than through its previous arrangement where it contracted its Internet services to other providers.¹²
- PSINet acquired the rights to use 10,000 miles of IXC's OC-48 switched network that will be used for its Internet backbone capacity. This network is 50 times faster than the T3 backbone that is dominant today. In a press release announcing this increased capacity PSINet stated, "We aren't dependent on telcos for our network infrastructure: as a result, we can deliver our services in a more timely manner and are less effected by

10 <http://www.qwest.com/press/12998.html>

11 <http://www.sprint.com/sprint/press/releases>

12 <http://www.att.com/press>

incidents that affect other carriers' networks and business plans."¹³ PSINet emphasized that they have the bandwidth necessary to support customers requirements for the foreseeable future.

- UUNET in October of 1997 announced its new service OCDirect. This service is designed to meet the bandwidth requirements for high-capacity users such as Internet service providers, Internet content providers, large corporations, and organizations with large Web sites. UUNET is able to offer this service as a result of a \$300 million dollar investment in network infrastructure, which significantly raised the speed of its backbone.¹⁴

More generally, as one industry expert recently noted, that while three years ago available Internet bandwidth doubled every year, bandwidth today doubles every 4 to 6 months.¹⁵ For U S West to insinuate that adequate investment in the backbones is not occurring is nonsensical.

In CIX's view, the sources of significant congestion on the Internet lie not on the backbones, but primarily at the information provider's source.¹⁶ Network Access Point ("NAP") congestion is also far less frequent today and, to the extent that it occurs, Internet providers oftentimes resolve those issues without regulatory intrusion through private peering arrangements that by-pass the NAPs or through routing to more efficient NAPs to avoid temporary network congestion.

¹³ <http://www.psi.net/news/pr/98/ixccomplete.html>

¹⁴ <http://www.us.uu.net/press/oc3.shtml>

¹⁵ Statement of Alan Taffel, UUNET Technologies, at Spring Internet World Conference, Los Angeles, March 19, 1998.

¹⁶ Specifically, congestion can occur because of limitations of the capacity of the content provider's server.

C. Competition and Innovation on the Internet is Better Served Through Open Access to Advanced Local Telecommunications Services

CIX certainly applauds U S West's efforts to deploy xDSL technologies. However, to better serve users' data and telephone needs, the ILEC's access lines and network (whether combined with ADSL or other technologies) must remain open with competitive safeguards, including unbundling and resale, for robust competition to develop. This is not just the statutory mandate of the 1996 Act, but a principle that must be held to if local telecommunications competition is to emerge. If not, Americans will find themselves -- once again -- locked into local access monopoly that seemed state-of-the-art at one time, but which will eventually be surpassed by ongoing progress of the competitive technology markets.

The Internet is a continuing test-bed for new technologies: those that work and meet market demand, and those that do not and quickly fail. By comparison, the rate of innovation on the PSTN, which has been U S West's proving ground for decades, is far less impressive. For example, the ILECs' slow rate of ISDN deployment may be a harbinger of ILEC xDSL service roll-out. In the Internet market, an Internet year (in terms of depreciation) is measured in a matter of months. Currently in the United States, CIX estimates that major backbone providers plan to double their backbone capacity every 4 to 6 months.

Equally important for the long term growth of Internet communications are the regulatory and market efforts to make the local access market more competitive and diverse. Today, U S West and other ILECs continue to control 99% of the country's local service business.¹⁷ CIX believes that it is more important to ensure the continued growth of local competition -- a path

¹⁷ 1996 Trends in Telephone Service, Industry Analysis Div. - CCB, at Table 9.1 (Feb. 1998) (CAP/CLEC held a 1.0% share of Nationwide local service revenues in 1996, up from 0.7% in 1995).

that the Commission has worked for so arduously -- than it is to ensure the success of any given ILEC technology application as it competes on the Internet.

Moreover, U S West has not demonstrated that it actually needs the exemptions from statutory and regulatory obligations in order to effectively deploy xDSL. For example, U S West is deploying xDSL on an intraLATA basis as the market demands it and consistent with existing statutory obligations. U S West is already investing \$116 million to deploy ADSL in forty cities.¹⁸ As it does so, the existing competitive Internet backbone providers will meet such demand for high-speed services, or, as U S West obtains Section 271 interLATA authority, it can enter the market to provide Internet backbone services through its Section 272 affiliate. U S West apparently has not even attempted to work out alleged short-term capacity issues with the existing Internet backbone providers, because it would obviously prefer to own all facilities from the customer's home to the global Internet.¹⁹ U S West provides no indication as to why, if there is a "pent up market," other providers are not building networks in these regions to profit from such a market.²⁰

Indeed, to avert loss of local market share, U S West has sufficient financial incentive to deploy an ADSL network within the ambits of the current law. U S West is already offering its "Megabit" ADSL from 28 central offices in Arizona, and by the end of the second quarter of

¹⁸ U S West Petition at 5.

¹⁹ For example, the Commission has held that, even prior to Section 271 approval, RBOCs may engage in nondiscriminatory "teaming" relationships with interLATA providers. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, as Amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 96-149, 11 FCC Rcd. 21905, 22047 (1996) ("Non-Accounting Safeguards Order").

²⁰ U S West Petition at 26.

1998 will offer ADSL services in a total of over 150 central offices in all 14 of its states.²¹ U S West has already filed tariffs in states within its region to commence ADSL service.²² It seems improbable that U S West would have begun service, purchased equipment, and developed a mass deployment plan if the feasibility of ADSL deployment actually hinges on the granting of its Petition.

U S West has both financial and strategic incentives to deploy intraLATA ADSL, irrespective of its Petition. First, U S West itself states that there is strong demand for ADSL services in its region, and expects to have over 100,000 subscribers in its region by the end of 1998.²³ Financially, U S West risks a significant loss of their existing market share in the local data access market, as the threat of other local telecommunications providers and the demand for data services become more real. In terms of strategy, U S West must also plan to participate in the ever-growing Internet communications marketplace, and to form strategic alliances for the long term. It has, in fact, formed such powerful strategic alliances. U S West's participation in the ADSL Forum provides it an important strategic opportunity to work with computer hardware and software providers (e.g., Microsoft, Intel, Compaq) and other incumbent LECs (e.g., U S West, Ameritech, and Pacific Bell) to control and resolve xDSL technical and deployment issues. Thus, placed in the context of its long-term business interests, U S West's actual need for statutory and regulatory exemptions as incentives to deploy xDSL -- exemptions which ensure local telecommunications competition and competition among ISPs as incentive for deployment -- is doubtful.

21 <http://www.uswest.com/com/disclosures/netdisclosure403/index403.html>

22 U S West Petition at 25.

23 U S West Petition at 26.

To the extent Ameritech faces any financial challenge in the deployment of xDSL, it is due to the market interplay between the ILEC's xDSL roll-out and its own profitable second and third line sales and dedicated access (including T1) sales.²⁴ However, that market-based decision must be made by the ILEC regardless of the outcome of its Petition.

D. U S West Should Focus Its Innovations on Improving Local Access Solutions for Rural Americans

CIX strongly supports the provision of broadband services to all Americans. In fact, many independent ISPs are the sole providers of Internet service to rural areas. For example, Western Regional Networks which serves primarily the rural populations of eastern Utah and Colorado, has built a subscriber base of over 9,000 customers. Perhaps nowhere more than in these rural areas are the benefits of the Internet being realized, with individuals able to participate in commercial and intellectual offerings not otherwise possible from their remote locations.

However, CIX questions the factual premise that U S West's deployment of ADSL will bring broadband services to rural America, as CIX comprehends that there are technical limitations that prevent such offerings. The biggest limitation to rural ADSL is that an end-user must be located within close proximity to a LEC's central office. (see II (B)(2), below). This proximity restriction excludes 40% of all homes in the United States, most of which fall within

²⁴ The growth in sales of these lines has been a primary source of U S West recent growth for the Bell companies. See Lee L. Selwyn and Joseph W. Laszlo, The Effects of Internet Use on the Nation's Telephone Network, January 22, 1997.

rural and suburban areas.²⁵ Thus, in rural areas where the population is not clustered, ADSL may not be a feasible high bandwidth data access solution.²⁶

Additionally, CIX also notes that recent U S West action is inconsistent with its stated objective of providing broadband to rural America.²⁷ U S West has filed for removal of its LADS tariffs in several of its states. See also, Part II(B)(1). The removal of LADS tariffs would effectively deter competing ISPs ability from providing xDSL services to the detriment of rural end users.²⁸

CIX believes that market demand and competitive local data access offerings will accelerate the deployment of backbone capacity to rural areas. While technical solutions are being developed, U S West can focus on fulfilling the section 271 requirements in order to offer interLATA services as they desire. If at some juncture it is determined that the market is incapable of addressing rural areas, which CIX feels is unlikely, such provision of broadband services to these areas must be done through appropriate mechanisms in a competitive manner.

II. The U S West Petition Fails to Address Key Public Interest Issues

U S West asks the Commission to deregulate the following end-to-end service package: (a) local xDSL access service, (b) U S West Internet Service, and (c) long-distance interLATA

²⁵ *DSL vs. The World*, PC Computing, January 1998 at 265.

²⁶ Given the technical limitations of ADSL, U S West may not be best positioned to meet the challenge of providing broadband to rural areas. In the short term, it appears that providers of alternative technologies such as satellite or wireless providers may be better suited to overcoming the distance limitations of wired terrestrial systems. As such, perhaps the Commission should focus on deregulatory efforts to promote these services.

²⁷ CIX also notes that U S West has, in recent years, sold many of its rural exchanges in order to focus on its services in metropolitan areas that are more lucrative.

²⁸ <http://www.boardwatch.com/MAG/98/mar/bwm1.html>

data capacity. U S West addresses several potential benefits of such relief, but leaves significant competitive issues essential to the public Interest unresolved. Without clarification and resolution of these issues, granting of this Petition allows for the potential of U S West to extend its monopoly over local lines and access to Internet services.

First, U S West's proposed service would be rooted in its monopoly over local access lines and central office facilities. However, U S West does not adequately explain why, if its requested relief were implemented, it should not be treated as a dominant carrier.

Second, U S West fails to explain how competing ISPs are to gain access to this service, to compete with the U S West Internet Services, or to access homes and businesses that have chosen xDSL. U S West also fails to explain how it intends to improve the backbones. Without describing how it will address these issues, neither the public nor the Commission can discern whether the Petition is in the "public interest" for a competitive market for Internet services.

Finally, the Commission has already held that it will initiate the implementation of Section 706 through a general rulemaking proceeding. Company-specific deregulatory measures can be fully evaluated by the public only after the Commission has laid down its Section 706 regulatory framework for such requests. Until that time, consideration of the U S West Petition is premature.

A. U S West Requests Deregulation of a Local Telecommunications Service That Employs Its Existing Monopoly

If U S West chooses to bundle its xDSL with its Internet access service and long-distance Internet backbone service, then its xDSL access services remain local telecommunications that must be separately provisioned.²⁹ From a policy perspective, this distinction is important because U S West's xDSL undeniably obtains fundamental market advantages vis-a-vis its

²⁹ AT&T Frame Relay Order, 10 FCC Rcd. at 13725.

existing monopoly over access lines and central office facilities. Thus, in presenting the merits of its request, U S West must address why its xDSL service should be deregulated when such a service is so *intrinsically married* to its local access monopoly. CIX believes it is essential for the commission to maintain the statutory and regulatory safeguards protecting the telecommunications and information services from ILEC abuses.

1. U S West's Proposed xDSL Service Appears To Be A Local Telecommunications Service using ILEC Access Lines Bundled With Internet Access and with InterLATA Internet Capacity.

U S West currently offers a version of ADSL through its MegaBit Service that "provides end-to-end connectivity for simultaneous high-speed data and voice transmissions over a dedicated transport architecture."³⁰ In order to deliver such powerful capabilities,³¹ modem and computer facilities are installed both at the customer premises and integrated with existing lines at the ILEC's central office. At the customer end, the ADSL modem splits the voice transmission channels apart from the upload/download data channels. In this way, a customer may lease a single ILEC line to maintain continual high-speed data access at the same time the customer's telephone is in use. The voice telephony is contained within the lower frequencies (e.g., 0 to 4 kHz) of the copper wire, while the upper frequencies (4 kHz to 2 MHz) are used for the data download/upload channels. Significantly, the data user does not "dial-in" or otherwise employ the PSTN in order to reach the Internet; instead, the customer perceives ADSL as an "always on" connection to the Internet.

³⁰ http://www.uswest.com/com/customers/enterprise/dsl/fast_facts.html

³¹ U S West current Mega Bit offerings offer alternative rates of 256 Kbps, 512 Kbps, 768 Kbps, and have planned offerings of speeds of 1 Mbps downstream/1Mbps upstream; 4 Mbps downstream/1 Mbps upstream and 7 mbps downstream. This means that connections to the Internet will be 250 times faster than a 28.8 k analog modem. (see http://www.uswest.com/com/customers/enterprise/dsl/fast_facts.html)

At the ILEC central office, the ADSL modem "splits" the voice from the data communications, and the voice traffic is routed to the ILEC's PSTN switch. However, data communications from and to the customer does not enter the ILECs' central office switch;³² it is separately routed to a digital subscriber line access modem ("DSLAM"). The DSLAM aggregates Internet traffic onto higher-capacity ATM or fiber facilities, which are ultimately connected to the Internet.³³ That final interLATA portion is logically and technically distinct from the xDSL access service portion; other providers, including independent ISPs, can and do offer Internet access that is separate from the local transport to and from the ISP.³⁴

As CIX understands U S West's offering, its xDSL service would be essentially a local telecommunications service. This is supported by the fact that U S West has already filed xDSL service tariffs in several in-region states that could be used by consumers for connection to Internet service providers, and are no different than U S West's ISDN offerings or analog business and residential second line offerings.³⁵

³² In this way, ADSL could alleviate alleged PSTN switch congestion issues.

³³ See P. Robinson, "DSL v. The World," www.PCComputing.com at 263 (Jan. 1998) (attached hereto).

³⁴ In fact, Bell Atlantic's current ADSL trials in Northern Virginia allow customers to choose either Clarknet or CAIS as the ISP, in addition to Bell Atlantic Internet Services.

³⁵ CIX also notes that, under existing Commission precedent, U S West should unbundle and separately tariff its xDSL service. See, AT&T Frame Relay Declaratory Ruling, Memorandum Opinion and Order, 10 FCC Rcd. 13717, 13725 (1995) (Computer II requires a facilities-based carrier engaged in "enhanced" services to separate and tariff its "basic" services) (quoting, Computer II, 77 FCC 2d at 475)).

2. U S West Requests the Deregulation of a Local Telecommunications Service That Employs Its Existing Monopoly

If achieved, the promise of ADSL for the public is largely measured in terms of much greater bandwidth to homes and businesses through the existing ubiquitous network of telephone access lines.³⁶ For the Bell Companies, xDSL is an especially attractive technology because it adds significant value to the existing plant. However, this end-to-end service (absent the Section 271, 251(c), and 272 safeguards that U S West seeks relief from) places US West in the position of a dominant carrier; the public interest would seemingly be better served with the full panoply of dominant carrier regulation.³⁷ While CIX is not here advocating for dominant carrier regulation, it is incumbent on U S West, as petitioner, to better explain how its use of the access monopoly (without the regulatory and statutory safeguards that it proposes be lifted) would not raise the same legitimate public interest concerns underlying dominant carrier regulation.

B. The U S West Petition Fails To Address Key Competitive Issues Of the Internet Service Provider Industry.

The Petition also fails to adequately address at least two key competitive issues raised by the deployment of ADSL which will have a significant impact on the existing level of competition in the Internet Service Provider industry. These issues must be developed before the public interest merits of the U S West Petition can be assessed.

³⁶ According to the ADSL Forum, the high penetration rate of the ILEC existing telephone network makes ADSL a much more attractive option for mass deployment of high bandwidth services to the home than CATV. ADSL Forum, "Growth of Copper Access Lines," at <http://adsl.com/copper_access_growth.html>.

³⁷ "Regulatory Treatment of LEC Provision of Interexchange Services," Second Report and Order and Third Report and Order, CC Dkt. No.s 96-149, 96-61, FCC 97-142, ¶¶ 85-92 (rel. April 18, 1997) (dominant carrier regulation applies unless the BOC complies with the mandates of the order, including a Section 272 separate affiliate).

1. Interconnectivity With Other ISPs

U S West states that it currently offers ADSL on an equal basis to all ISPs and claims that if relief is granted that end users will be able to enjoy the full benefits of U S West's expanded data services when they subscribe to U S West's Internet access service or an unaffiliated ISP.³⁸ However, these technical arrangements for independent ISPs remain completely unclear. As described in the attached Figures 1, 2, and 3, ADSL deployment could mean that only U S West offers its ADSL and Internet service to customers (which CIX strongly opposes) or it could provide for functional and competitive market for the ISP industry.

Without some explanation, CIX and the independent ISP industry cannot know whether U S West will in fact offer access to its xDSL to any other ISPs, on what terms, or whether such terms would be equivalent to those afforded U S West's own ISP. Without the assurance of a functional and competitive market for the ISP industry, CIX submits that the Commission cannot evaluate whether the U S West Petition would serve the public interest.

Based on U S West's recent actions to prevent independent ISPs from xDSL deployment, CIX believes that the U S West Petition is quite possibly a proposal to exclude consumers of independent ISPs from gaining access to xDSL and/or inhibit the businesses of such ISPs, to the detriment of the Commission's goals and societal benefits of the competitive provision of Internet services.

U S West asserts in its petition that it does not seek to avoid its obligation to make bottleneck facilities available to CLECs.³⁹ U S West's recent action, however, do not support this assertion. First, out of frustration, CIX member American Communications Services, Inc. (ACSI) recently filed complaints with both the New Mexico and Arizona State Corporation

³⁸ U S West Petition at 5.

³⁹ U S West Petition at 4.

Commissions because U S West has "deliberately" slowed interconnection to its local exchange networks.

Second, at the same time that U S West is rolling out its own ADSL service, it is prohibiting ISPs from offering this service on a competitive basis. As stated above, U S West has applied in several states to remove its tariffs on LADS circuits that can be used by ISPs to offer low cost xDSL service.⁴⁰ U S West was successful in its efforts in New Mexico and North Dakota. In Colorado, where U S West's efforts have been met with considerable opposition,⁴¹ the Colorado PUC staff position is that, "[r]etaining the LADS offering allows users, such as Internet service providers, to use LADS to meet the growing demand for Internet access and usage without increasing the load on the local dial/switched network."⁴² And yet, U S West seeks to remove that competitive option for rural consumers.

2. Collocation and xDSL Distance Limitations

The physical distance limitation inherent in the deployment of any xDSL service is also perhaps the most significant technical issue to independent ISPs. Because of line attenuation issues, xDSL services can only be offered to customers that are within a wired radius of the ILEC office. For example, the ADSL Forum estimates that ADSL download speeds of 1.5 to 2 Mbps

⁴⁰ Todd Erickson, *Miscellaneous*, Boardwatch, March 1998. States include, Arizona, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

⁴¹ In the Matter of Advice Letter No. 2663 Regarding U S West Verified Application Per Rule 57, Docket No. 97K-34T.

⁴² In the Matter of Advice Letter 2663 Regarding U S West Communication's Verified Application Per Rule 57, Docket No. 97K-342T, 97A-243T, 97S-289T.

can only be offered to customers that are within a wired distance of 18,000 feet of an ADSL-equipped ILEC central office.⁴³

Under current FCC rules, independent ISPs are denied collocation at the ILEC office; however, the ILEC's Internet affiliate (such as U S West.net) is able to collocate.⁴⁴ With the deployment of ADSL, the ILEC's ISP affiliate has a competitive advantage over any other independent ISPs in the market because it has a larger geographic reach to offer ADSL than all of its competitors. For example, assume that ADSL can be deployed only within 18,000 feet of a ILEC office, and that the ISP's office is 5,000 feet from that office because it cannot collocate. (See Figure 4, attached hereto). In such a market, only the ILEC's ISP-affiliate can serve the customers that are located in the geographic range within 18,000 feet and more than 13,000 feet away from the central office. In that same geographic market, independent ISPs cannot serve the "ring" from 18,000 to 13,000 feet and so are denied ILEC telecommunications services that are afforded the ILEC-affiliated ISP.

Such abuse of monopoly access to the underlying telecommunications service, for the benefit of the ILEC's affiliate, is patently offensive to the Commission's Computer III goals for a competitive information services market. For example, the purpose underlying the "equal access" standard adopted as part of CEI is to "require the basic service functions utilized by the carrier-provided enhanced service to be available to others on an unbundled basis, with technical specifications, *functional capabilities*, . . . equal to those provided to the carrier's enhanced services."⁴⁵ Discrimination favoring the ILEC-affiliated ISP use of the local

⁴³ ADSL Forum, "ADSL Tutorial: Twisted Pair Access to the Information Highway," at <http://adsl.com/adsl_tutorial.html>.

⁴⁴ Computer III Inquiry, 104 F.C.C. 2d 958, 1042 (1986).

⁴⁵ Computer III Inquiry, 104 F.C.C. 2d at 1036 (emphasis added).